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Attorney for Plaintiff,
ALEXANDER WILD

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

ALEXANDER WILD,

Plaintiff,

v.

ADVANCED TERMITE CONTROL,
INC.,

Defendant.

Case No.: 1:17-CV-00443

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff, Alexander Wild, for his Complaint against Defendant,
Advanced Termite Control, Inc., alleges as follows:

INTRODUCTION

1. Alexander Wild (hereinafter “Plaintiff”), by Plaintiff’s attorneys, brings this action to challenge the actions of Advanced Termite Control, Inc. (hereinafter “Defendant”), with regard to the unlawful use of a

copyrighted image (hereinafter “Image”) owned by Plaintiff, and this conduct caused Plaintiff damages.

2. For the purposes of this Complaint for Damages, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendant(s) named in this caption.

JURISDICTION AND VENUE

3. This is a civil action seeking damages and injunction relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, whereby the Defendant violated Plaintiff’s exclusive rights as copyright owner pursuant to 17 U.S.C. §§ 106 and 106A.

4. This Court has subject matter jurisdiction over Plaintiff’s claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

5. This Court has personal jurisdiction over the Defendant due to Defendant’s transactions or conduct pursuant to Tex. Civ. Prac. & Rem. Code § 17.042(a)(2) because Defendant purposefully availed itself to the rights and privileges of doing business in Texas by advertising its product available for shipment to Texas on the Internet. The infringing photograph,

which is the subject of this controversy, was found alongside said advertisement.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district.

PARTIES

7. Plaintiff is a natural person who resides in the City of Austin in the State of Texas and is a professional photographer by trade.

8. Plaintiff is a "copyright owner" who holds "exclusive rights" to his "copyrighted work[s]" pursuant to 17 U.S.C. §§ 101, 106, and 106A.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is a business entity operating in the City of Glen Rock, in the State of Pennsylvania, advertising its products for sale within the State of Texas.

10. Plaintiff is informed and believes, and thereon alleges, that Defendant unlawfully published Plaintiff's copyrighted works without Plaintiff's express or implied authority.

FACTUAL ALLEGATIONS

11. At all times relevant, Plaintiff was an individual residing within the State of Texas and within this judicial district.

12. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant was a business entity residing in the State of Pennsylvania.

13. Plaintiff is a professional photographer. Plaintiff holds a Ph.D. in Entomology from the University of California/Davis and is Curator of Entomology at The University of Texas, Austin. Plaintiff uses this degree in association to his photography. His photographs appear in numerous natural history museums, magazines, books, television programs and other media. Plaintiff has written works with respect to science photography and is the founding instructor of the BugShot Insect Photography Workshops. He sells or licenses photography to people and companies seeking to make use of the photographs for advertisements and pecuniary gain. Plaintiff's livelihood is dependent on receiving compensation for the photographs he produces.

14. Plaintiff took the original Image. *See* Original Image attached hereto as Exhibit A.

15. Plaintiff has ownership rights and copyrights to the Image.

16. Plaintiff has registered the Image with the United States Copyright Office under registration numbers V Au 1-084-251.

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17. Plaintiff did not consent to authorize, permit, allow in any manner the use of the Image by Defendant.

18. Plaintiff is informed and believes that Defendant used Plaintiff's copyrighted works without his permission and that it published, communicated, benefited through, posted, publicized and otherwise held out to the public for commercial benefit, the original and unique works of Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

19. Plaintiff is informed and believes that Defendant used the Image on Defendant's website <http://www.atcpestcontrol.com/> from October 26, 2016 to present in order to sell its "DIY Ant Control Kit." *See* Screenshots of Defendant's use attached hereto as Exhibit B.

20. As of May 11, 2017, Plaintiff's Image was still located and accessible on Defendant's website server via an URL located at <http://www.atcpestcontrol.com> allowing for further public access and downstream infringement. *See* Current Screenshot attached hereto as Exhibit C.

21. Defendant used the Image to promote the Defendant's website despite its knowledge that the Image is subject to copyright.

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22. Plaintiff did not consent to the use of his Image for commercial gain.

23. Plaintiff notified the Defendant of the infringement but Defendant was not interested or willing to resolve the matter amicably with Plaintiff.

FIRST CAUSE OF ACTION

COPYRIGHT INFRINGEMENT

Title 17 of the United States Code

24. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

25. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original materials and/or work.

26. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted works in violation of Title 17 of the U.S. Code, in that it used, published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique work of the Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

27. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 if willful or up to \$30,000 if unintentional pursuant to 17 U.S.C. § 504(c).

28. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees pursuant to 17 U.S.C § 505 from Defendant.

29. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant

- Awarding statutory damages in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c) from Defendant;
- Awarding costs of litigation and reasonable attorney's fees pursuant to 17 U.S.C. § 505 from Defendant;
- Enjoining the Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
- Awarding any other relief the Court deems just and proper.

Dated: May 11, 2017

Respectfully submitted,

/s/ Mathew K. Higbee

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Attorney for Plaintiff

DEMAND FOR BENCH TRIAL

Plaintiff, Alexander Wild hereby demands a bench trial in the above matter.

Dated: May 11, 2017

Respectfully submitted,

/s/ Mathew K. Higbee

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